IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. LEON ROBERT HARSHMAN, Appellant.	No. 38163-0-II UNPUBLISHED OPINION

Hunt, J. — Leon Robert Harshman appeals his bench trial conviction for failing to register as a sex offender. Through counsel, he challenges the sufficiency of the evidence. In his pro se Statement of Additional Grounds (SAG), he challenges his sentence, asserting that the combination of incarceration and community custody exceeds the statutory maximum. We affirm.[1]

FACTS

Harshman has 1983 and 1989 rape convictions, on the basis of which he is required by RCW 9A.44.130(1)(a) to register his residence with the county sheriff. He also has a long list of other crimes, most of them misdemeanors, for which he has been incarcerated from time to time. His last date of release before this crime was October 5, 2007. At that time he registered as a transient. He registered again as a transient on October 12. On October 19, he registered an address: 419 South 55th Street, in Tacoma. Because he was no longer transient, he was not required to register again for 90 days.

[1] A commissioner of this court considered this matter under RAP 18.14 and referred it to a panel of judges.

But on November 7, 2007, a community corrections officer contacted Tacoma Police Detective Douglas Fuller and told him that Harshman was not living at the registered address, and in fact, the Department of Corrections had not approved it as a residence for Harshman. On November 14, Detective Douglas went to the 55th Street address and talked to Seanna Baker, one of the resident-owners of the property. Baker told Fuller that she and her husband had given Harshman permission to live in their travel trailer, but he had not done so. This charge followed.

The State charged Harshman with failure to register as a sex offender. At Harshman's bench trial, Seanna Baker confirmed Detective Fuller's account. She explained that the trailer was located on their property, just four feet from their house, and she would have known if Harshman was there. She said that he had stayed in the house for two nights as a house sitter while they were gone, but he had never lived on the property.

Harshman did not testify. But the defense called Ron Baker, Seanna's husband, who (1) agreed that he and his wife had given Harshman permission to live in the trailer; (2) but said that the only times he had seen Harshman on the property were times when Harshman did some mechanic work for him; and (3) explained that he (Baker) went to work early in the morning, went to bed about 9 pm, did not have had much opportunity to have contact with Harshman, and did not know whether or not he was living in the trailer.

The court convicted Harshman as charged. Harshman appeals.

ANALYSIS

Harshman essentially argues that the evidence was too ambiguous to prove beyond a reasonable doubt that he did not reside at the South 55th Street address between October 19 and

November 14, 2007. He bases this argument on (1) Seanna Baker's testimony that "to [her] knowledge" Harshman never stayed in their trailer; (2) Ron Baker's testimony that he did not know whether Harshman lived there; and (3) Detective Fuller's failure to check inside the trailer for evidence of Harshman's presence. This argument fails.

Evidence is sufficient to support a conviction if, viewed in the light most favorable to the prosecution, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). We give deference to the trier of fact, who resolves conflicting testimony, evaluates the credibility of witnesses, and weighs the persuasiveness of the evidence. *State v. Martinez*, 123 Wn. App. 841, 845, 99 P.3d 418 (2004).

In determining whether the necessary quantum of proof exists, we need not be convinced of the defendant's guilt beyond a reasonable doubt, but only that substantial evidence supports the State's case. *State v. McKeown*, 23 Wn. App. 582, 588, 596 P.2d 1100 (1979). Seanna Baker's testimony that Harshman had never lived in the trailer was sufficient to satisfy this standard. At least five times she said, without qualification, that Harshman never moved in and never lived in the trailer. She said that she would know if he had. Her one-time use of the qualifying phrase "to her knowledge," after many repetitions of the question, did not prevent the trial court's reliance on her testimony. Ron Baker's equivocal testimony and Detective Fuller's failure to look inside the trailer notwithstanding, the evidence was sufficient to support the conviction.

Pro se, Harshman challenges his sentence. The statutory maximum for the crime is five years. The court imposed incarceration of 36 to 48 months, the middle of the standard range, and

community custody of 36 to 48 months. Harshman contends that his sentence should have been 24 months of incarceration, plus 36 months of community custody. The court was not required to impose that particular sentence.

It is true that "[t]he total punishment, including imprisonment and community custody, may not exceed the statutory maximum" for a particular offense. *State v. Sloan*, 121 Wn. App. 220, 221, 87 P.3d 1214 (2004). But Harshman can be on community custody for at least ten months and for part or all of any earned good time. The trial court specifically precluded a sentence longer than the maximum, noting on the judgment and sentence that "combined in-custody time and community custody time not to exceed 60 months." The sentence is proper. *See Sloan*, 121 Wn. App. at 223-24.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports but it will be filed for public record pursuant to RCW 2.06.040.

Hunt, J.

We concur:

Houghton, P.J.

Bridgewater, J.